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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,335	09/29/2003	Hiromichi Tanimukai	5854-30 (MTM-70-US)	5314
20575	7590	10/11/2006	EXAMINER	
MARGER JOHNSON & MCCOLLOM, P.C. 210 SW MORRISON STREET, SUITE 400 PORTLAND, OR 97204			PHAM, VAN T	
			ART UNIT	PAPER NUMBER
			2627	

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/675,335

Applicant(s)

TANIMUKAI ET AL.

Examiner

VAN T. PHAM

Art Unit

2627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 5-7 is/are rejected.
- 7) ☒ Claim(s) 3,4,8 and 9 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 9/29/2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2, 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Tagiri et al. ((US 2001/0044933)).

Regarding claim 1, Tagiri discloses an optical disc drive which can record and/or reproduce data onto and/or from an optical disc when the optical disc is loaded into the optical disc drive, the optical disc drive comprising: an electrically rewritable flash ROM which stores firmware of the optical disc drive (see [0026]); means for judging whether or not the loaded optical disc is a predetermined type of optical disc in which update data for updating the currently stored firmware is stored when the optical disc is loaded into the optical disc drive (see Fig. 2); a buffer memory for temporarily storing the update data recorded in the loaded optical disc in the case where the judging means judges that the loaded optical disc is the predetermined type of optical disc (see Figs. 1-2, element 5 and [0019]-[0026]); and control means for determining whether the currently stored firmware of the optical disc drive should be updated with the update data based on the absence or presence of a predetermined signal, and updating the currently stored firmware with the update data stored in the buffer memory in the case where it is determined that the currently stored firmware of the optical disc should be updated (see Figs. 1-2 and col. 1).

Regarding claim 2, see Figs. 1-2, Tagiri discloses the optical disc drive according to claim 1, further comprising an eject button wherein the predetermined signal is a signal outputted when the eject button is pushed (inherently).

Regarding claim 5, the optical disc drive according to claim 1, wherein the optical disc drive is constructed so as to be able to carry out the update of the firmware without connecting to a host computer or a network (see Figs. 1-2).

Regarding claims 6-7, see rejection above of claims 1-2.

Allowable Subject Matter

3. Claims 3-4 and 8-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 3 and 8 are allowed over cite references because none of the references disclose or suggest the combination of claims 1-2, 6-7, respectively, and the limitation of **a timer measuring a predetermined time wherein the control means determines whether the currently stored firmware of the optical disc drive should be updated with the update data based on whether or not the signal from the eject button is detected within the predetermined time.**

Claims 4 and 9 are allowed over cite references because none of the references disclose or suggest the combination of claims 1, 6, respectively, and the limitation of **the judging means sequentially judges whether the optical disc is a CD-R or not, whether the optical disc includes one session or not, whether additional data can be consecutively recorded in the**

optical disc or not, whether one variable packet-type track is included within the one session or not, and whether the data recorded in the track is the update data.

Cited References

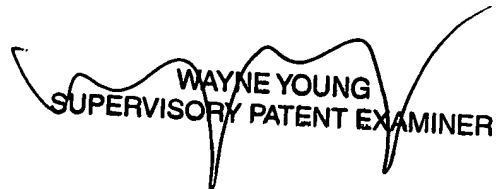
4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The cited references relate to firmware update programs to make a host computer execute a firmware update function to update the firmware stored in a storage part of an optical disk drive; new firmware is downloaded to a flash ROM for firmware update; and disc library apparatus.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VAN T. PHAM whose telephone number is 571-272-7590. The examiner can normally be reached on Monday-Thursday from 9:00am –5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wayne Young can be reached on 571-272-7582. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


WAYNE YOUNG
SUPERVISORY PATENT EXAMINER